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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 ARTURO SEPULVEDA AYALA,

9 Plaintiff,

10 v.

11 KRISTI NOEM et al.,

12 Defendant.

CASE NO. 3:25-cv-5185-JNW

TEMPORARY RESTRAINING ORDER

13
14 **1. INTRODUCTION**

15 The Court considers an emergency request for ex parte relief from a
16 plaintiff—Arturo Sepulveda Ayala—facing imminent deportation despite holding
17 deferred action status. Though such orders are disfavored, the serious questions
18 raised regarding the Government’s contradictory positions—USCIS granting
19 Sepulveda Ayala deferred action while ICE prepares his removal—combined with
20 the clear irreparable harm of deportation, justify temporary intervention.

21 Given that the Government has filed a notice indicating its intent to oppose
22 only if the Court deems a response appropriate, and considering the imminent
23 threat of removal, the Court grants this limited restraining order without

1 requesting such a response. This temporary relief preserves the status quo until
2 both parties can fully present their arguments at a preliminary injunction hearing.
3 Dkt. No. 6. This approach balances the extraordinary nature of ex parte relief
4 against the concrete risk of irreversible harm.

5 **2. BACKGROUND**

6 Sepulveda Ayala applied for a U visa with U.S. Citizenship and Immigration
7 Services (USCIS) in 2022. Dkt. No. 6-1 at 1–2. U.S. Immigration and Customs
8 Enforcement (ICE) stayed his removal from the United States while his U visa
9 application was pending until January 23, 2025. *Id.* On January 8, 2025, Plaintiff
10 filed a second stay application with ICE because he still had not received a decision
11 on his U visa application. *Id.* at 2. ICE did not adjudicate his second stay
12 application before the first stay expired and arrested Sepulveda Ayala on February
13 2, 2025. *Id.*

14 On February 19, 2025, USCIS issued a “Bona Fide Determination Notice” on
15 Sepulveda Ayala’s U visa application, granted him “deferred action,” and authorized
16 his employment in the United States. *Id.* at 4; *see also De Sousa v. Dir. of USCIS*,
17 720 F. Supp. 3d 794, 799 (N.D. Cal. 2024) (“If a U visa petition is deemed bona fide,
18 USCIS grants the petitioner ‘deferred action,’ along with work authorization.”).
19 “‘Deferred action’ refers to an ‘exercise in administrative discretion’ under which ‘no
20 action will thereafter be taken to proceed’ with the applicant’s removal.” *De Sousa*,
21 720 F. Supp. 3d at 799 (quoting *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525
22 U.S. 471, 484 (1999)).

1 On March 5, 2025, Plaintiff filed a complaint for mandamus relief to compel
2 the adjudication of whether he should be placed on the U visa waitlist, adjudication
3 of the U visa itself, and adjudication of his application for advance permission to
4 enter as a nonimmigrant. Dkt. No. 6-1 at 9. The complaint also alleges violations of
5 Sepulveda Ayala's due process rights and the Administrative Procedure Act.

6 One day later, on March 6, 2025, ICE denied Sepulveda Ayala's second stay
7 application as "unnecessary and in fact, redundant," because USCIS had already
8 granted Sepulveda Ayala deferred action. *Id.* at 2, 6–7. ICE continues to detain
9 Sepulveda Ayala at the Northwest ICE Processing Center in Tacoma, Washington,
10 and now intends to deport him soon. Dkt. No. 6-1 at 3 (explaining Ayala will soon be
11 "manifested for removal").

12 Sepulveda Ayala filed this emergency motion for a temporary restraining
13 order precluding his deportation. The Government filed a notice of intent to oppose
14 the motion, but only "if this Court deems a response is appropriate." Dkt. No. 8.

15 3. DISCUSSION

16 3.1 Legal standard.

17 The standard for issuing a TRO is the same as the standard for issuing a
18 preliminary injunction. *See New Motor Vehicle Bd. of Cal. v. Orrin W. Fox Co.*, 434
19 U.S. 1345, 1347 n.2 (1977). A TRO is "an extraordinary remedy that may only be
20 awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter v.*
21 *Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). "The proper legal standard for
22 preliminary injunctive relief requires a party to demonstrate (1) 'that he is likely to
23 succeed on the merits, (2) that he is likely to suffer irreparable harm in the absence

1 of preliminary relief, (3) that the balance of equities tips in his favor, and (4) that an
 2 injunction is in the public interest.” *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1127
 3 (9th Cir. 2009) (citing *Winter*, 555 U.S. at 20). These four factors—the *Winter*
 4 factors—apply whenever a preliminary injunction is sought. *Winter*, 555 U.S. at 20;
 5 see *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011) (“a showing
 6 on all four prongs” is required).

7 The Ninth Circuit takes a “sliding scale” approach to preliminary relief,
 8 under which “serious questions going to the merits and a balance of hardships that
 9 tips sharply towards the plaintiffs can support issuance of a preliminary injunction,
 10 so long as the plaintiffs also show that there is a likelihood of irreparable injury and
 11 that the injunction is in the public interest.” *Frailhat v. U.S. Immigr. & Customs*
 12 *Enft*, 16 F.4th 613, 635 (9th Cir. 2021) (cleaned up). This approach allows a
 13 stronger showing of one *Winter* factor to offset a weaker showing of another.
 14 *Planned Parenthood Great Nw., Hawaii, Alaska, Indiana, Kentucky v. Labrador*,
 15 122 F.4th 825, 843–44 (9th Cir. 2024).

16 After considering the record and the applicable legal standard, the Court
 17 concludes that an emergency TRO is warranted for the reasons stated below.

18 **3.2 Sepulveda Ayala raises serious questions going to the merits.**

19 Sepulveda Ayala raises serious questions going to the merits of his APA
 20 claim for unreasonable delay in the adjudication of his U-visa-related applications.
 21 The Court addresses only the merits of Sepulveda Ayala’s APA claim in this Order.
 22 See *Versaterm Inc. v. City of Seattle*, C16-1217-JLR, 2016 WL 4793239, at *5 (W.D.
 23

1 Wash. Sept. 13, 2016) (“Where a party asserts multiple claims, the court need not
2 find that the plaintiff is likely to succeed on the merits of all of the plaintiff’s claims
3 to issue a preliminary injunction.”).

4 Section 706(1) of the APA requires the reviewing court to “compel agency
5 action unlawfully withheld or unreasonably delayed.” *CRVQ v. USCIS*, No.: CV 19-
6 8566, 2020 WL 8994098 (C.D. Cal. Sept. 24, 2020) (quoting 5 U.S.C. § 706(1)) (citing
7 5 U.S.C. § 555(b) (“With due regard for the convenience and necessity of the
8 parties . . . and within a reasonable time, each agency shall proceed to conclude a
9 matter presented to it.”)). To decide whether an agency’s delay is unreasonable,
10 district courts in the Ninth Circuit use the six-factor “*TRAC* test.” The factors are:

- 11 (1) the time agencies take to make decisions must be governed by a
12 rule of reason;
- 13 (2) where Congress has provided a timetable or other indication of the
14 speed with which it expects the agency to proceed in the enabling
15 statute, that statutory scheme may supply content for this rule of
16 reason;
- 17 (3) delays that might be reasonable in the sphere of economic
18 regulation are less tolerable when human health and welfare are
19 at stake;
- 20 (4) the court should consider the effect of expediting delayed action on
21 agency activities of a higher or competing priority;
- 22 (5) the court should also take into account the nature and extent of
23 the interests prejudiced by delay; and
- (6) the court need not find any impropriety lurking behind agency
lassitude in order to hold that agency action is unreasonably
delayed.

1 *In re Pesticide Action Network N. Am., Nat. Res. Def. Council, Inc.*, 798 F.3d 809,
2 813 (9th Cir. 2015) (citing *Telecommunications Rsch. & Action Ctr. v. F.C.C.*, 750
3 F.2d 70, 79 (D.C. Cir. 1984) (“TRAC”)).

4 Considering these factors here, Sepulveda Ayala raises serious questions
5 about the reasonableness of the Government’s delay. The third and fifth factors are
6 particularly informative, as Sepulveda Ayala faces extreme prejudice through
7 deportation, and his health and welfare are at stake. Likewise, the fourth factor
8 supports a finding of unreasonable delay, given Sepulveda Ayala’s uniquely distinct
9 position as compared to other U visa applicants. *See A.C.C.S. v. Nielsen*, Case No.
10 CV 18-10759, 2019 WL 7841860, at *6 (C.D. Cal. Sept. 17, 2019) (considering
11 whether plaintiffs could differentiate themselves from other U visa applicants such
12 that the fourth *TRAC* factor weighed in their favor). He is distinct from other U visa
13 applicants because he is detained and facing immediate deportation even though he
14 has U.S. work authorization and a Bona Fide Determination Notice in hand. And
15 the delay has persisted for over two years.

16 Thus, Sepulveda Ayala presents serious questions about whether the
17 Government’s delay is unreasonable under the APA. Given the balance of hardships
18 tips sharply in Sepulveda Ayala’s favor, as explained below, this showing is
19 sufficient under the Ninth Circuit’s sliding scale approach to warrant temporary
20 relief while the Court more fully considers the merits.

3.3 The remaining *Winter* factors support a TRO.

The second *Winter* factor—irreparable harm—tips sharply in favor of a TRO. Sepulveda Ayala is in his 50s and has lived in the United States for most of his life. He will face deportation and family separation absent a TRO. He will face significant additional hurdles in the U visa process if removed. *See* Dkt. No. 6 (motion) at 5–6 (citing 8 U.S.C. §1182(a)(9)(A)) (explaining that removal will trigger “inadmissibility,” and will require Sepulveda Ayala to obtain a discretionary waiver of inadmissibility). These harms are severe, concrete, and cannot be remedied through monetary compensation.

The final two *Winter* factors, which involve balancing the equities and considering the public interest, merge when the Government is a party to a case. *Padilla v. Immigr. & Customs Enf’t*, 953 F.3d 1134, 1141 (9th Cir. 2020). These factors also tip sharply in Sepulveda Ayala’s favor. A TRO would impose little to no prejudice on the Government, which has already issued a Bona Fide Determination on Sepulveda Ayala’s U visa petition and authorized him to work lawfully in the United States. ICE acknowledged as recently as March 6, 2025, that removal would be inappropriate given his deferred action status. Thus, a TRO precluding Sepulveda Ayala’s deportation would change little to nothing for the agencies involved. Meanwhile, absent a TRO, Sepulveda Ayala will face life-changing and irreparable harm.

3.4 An ex parte TRO is appropriate and necessary.

Courts will rarely grant TROs ex parte. Fed. R. Civ. P. 65(b); LCR 65(b). But “if the movant meets the requirements of Fed. R. Civ. P. 65(b), the court may grant the motion without awaiting a response.” LCR 65(b). Sepulveda Ayala has met those requirements by demonstrating through specific facts in the supporting declaration of counsel that immediate and irreparable injury would result before full briefing could occur. The Government has filed a notice indicating its intent to oppose only if the Court deems a response appropriate. But given the imminent threat of deportation and the serious questions raised, the Court finds ex parte relief warranted without requesting an opposition at this time. A more thorough examination of the issues will occur at the preliminary injunction stage.

4. CONCLUSION

Accordingly, the Court ORDERS that Defendants and all their officers, agents, servants, employees, attorneys, and persons acting on their behalf in concert or in participation with them are immediately enjoined from:

- (a) Removing or deporting Sepulveda Ayala from the United States; and
- (b) Transferring Sepulveda Ayala from the Northwest ICE Processing Center to any other facility during the pendency of these proceedings.

Unless extended by the Court, this Temporary Restraining Order expires 14 days from entry. No security bond is required under Federal Rule of Civil Procedure 65(c) because Defendants face no realistic likelihood of harm from enjoining their conduct. *Jorgensen v. Cassidy*, 320 F.3d 906, 919 (9th Cir. 2003).

1 To the extent Sepulveda Ayala intends to move for a preliminary injunction,
2 the parties are ordered to meet and confer and file a joint status report by April 30,
3 2025, (1) proposing a preliminary injunction briefing schedule, (2) indicating
4 whether they believe a hearing is necessary, and if so, (3) indicating whether they
5 plan to present evidence at the hearing.

6 Dated this 26th day of April, 2025.

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9 Jamal N. Whitehead
10 United States District Judge
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